



**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

D.T.C. 11-1

September 26, 2013

Petition of YourTel America, Inc. for Designation as an Eligible Telecommunications Carrier

ORDER ON MOTION FOR WITHDRAWAL OF AMENDED ETC PETITION

I. INTRODUCTION

On February 10, 2011, YourTel America, Inc. (“YourTel”) filed an application, as amended (“Petition”), with the Department of Telecommunications and Cable (“Department”) for designation as an eligible telecommunications carrier (“ETC”) in the Commonwealth of Massachusetts pursuant to Section 214(e) of the Telecommunications Act of 1996 (“Act”), 47 U.S.C. § 214(e), and Federal Communications Commission (“FCC”) Universal Services, 47 C.F.R. §§ 54.101 through 54.207. *See Pet. of YourTel Am., Inc. for Designation as an Eligible Telecomms. Carrier*, D.T.C. 11-1, Petition at 1 (Feb. 10, 2011). YourTel now files a motion, pursuant to 220 C.M.R. § 1.04(4), seeking to withdraw its Petition without prejudice (“Motion to Withdraw Petition”). *See Pet. of YourTel Am., Inc. for Designation as an Eligible Telecomms. Carrier*, D.T.C. 11-1, Mot. of YourTel Am., Inc. for Withdrawal of Amended ETC Petition without Prejudice (Aug. 27, 2013). YourTel further requests that certain documents it produced in response to the Department’s record requests, which are the subject of a pending motion for confidential treatment, be returned to YourTel. *Id.* at 1. The Department grants YourTel’s Motion to Withdraw Petition in its entirety, agrees to return the documents identified by YourTel, and closes this docket.

II. PROCEDURAL HISTORY

The Department held a public hearing in this proceeding on May 10, 2011. The Department issued information requests to YourTel on May 13, 2011, June 13, 2011, and July 18, 2011. The Department received YourTel's responses to the aforementioned sets of information requests on June 6, 2011,¹ June 29, 2011, and July 25, 2011, respectively. The Department held an evidentiary hearing on August 9, 2011. On August 23, 2011, YourTel responded to the Department's 13 record requests made at the evidentiary hearing and sought confidential treatment for its responses to Record Requests 3 and 13. *See Pet. of YourTel Am., Inc. for Designation as an Eligible Telecomms. Carrier*, D.T.C. 11-1, Mot. of YourTel Am., Inc. for Confidential Treatment of Record Request Responses, at 3-4 (Aug. 23, 2011). The Department had not ruled on this motion for confidential treatment when it received the Motion to Withdraw Petition.

On February 6, 2012, the Federal Communications Commission ("FCC") issued an order substantially reforming the Lifeline and Link-Up programs. *See In the Matter of Lifeline & Link Up Reform & Modernization, et al.*, WC Docket No. 11-42, et al., *Rep. & Order & Further Notice of Proposed Rulemaking*, FCC 12-11 (rel. Feb. 6, 2012) ("Reform Order"). In the Reform Order, the FCC established comprehensive changes to the administration of the Lifeline program and eliminated Link-Up support for ETCs on non-tribal lands. *Id.* The FCC also granted a blanket forbearance from the "own-facilities" requirement of 47 U.S.C. 214(e)(1)(A), provided that ETC applicants meet certain conditions. *Id.* at ¶ 373.² Further, the FCC ordered that

¹ In response to a YourTel motion for protection of documents, the Department granted confidential treatment to certain portions of YourTel's responses to Information Requests 1-12 and 1-22 for a period of five years. *See Pet. of YourTel Am., Inc. for Designation as an Eligible Telecomms. Carrier*, D.T.C. 11-1, *Hr'g Officer Ruling on Mot. for Protection from Public Disclosure*, at 5-6 (July 6, 2011).

² Carriers seeking to take advantage of forbearance must (a) agree to provide Lifeline subscribers with 911 and E911 access and E911 compliant handsets; and (b) submit a compliance plan to the FCC detailing the

“carriers shall not receive reimbursement from the program, until the [Wireline Competition] Bureau approves their compliance plans.” *Id.* at ¶ 380.

On March 1, 2012, in the interest of administrative efficiency, the Department issued an order suspending this proceeding so that YourTel could satisfy the pre-conditions laid out in the FCC’s Reform Order and obtain the FCC’s approval of its compliance plan. *See Pet. of YourTel Am., Inc. for Designation as an Eligible Telecomms. Carrier*, D.T.C. 11-1, *Order Suspending the Proceeding* (March 1, 2012).³ YourTel filed its compliance plan with the FCC on March 5, 2012, and subsequently filed several amendments. *See* Letters from Robert J. Munnelly, Jr. to the Department dated March 28, 2012, May 1, 2012, and June 21, 2012 with attachments. The FCC has not yet approved YourTel’s compliance plan. Motion to Withdraw Petition at 1.

On August 27, 2013, YourTel filed its motion seeking to withdraw the Petition without prejudice and requested that the documents produced in response to Department Record Requests 3 and 13 be returned to YourTel. *Id.* No parties have intervened in this proceeding and no opposition has been filed to the Motion to Withdraw Petition.

III. ANALYSIS

measures the carrier will implement to comply with the Reform Order and a description of how the carrier will offer service. *Id.* at ¶¶ 373, 379.

³ In response to the Reform Order, YourTel informed the Department of its intent to take advantage of the FCC’s forbearance from the “own-facilities” requirement. *Id.* at 3. The Department suspended this proceeding to afford YourTel time to satisfy the pre-conditions laid out in the Reform Order and obtain the FCC’s approval of its compliance plan. *Id.* The Department directed YourTel to file an amendment to its Petition upon the FCC’s approval of its compliance plan. *Id.*

A party desiring to withdraw an initial pleading after the commencement of a hearing on such pleading shall file a motion for withdrawal in accordance with Department rules. *See* 220 C.M.R. § 1.04(4)(b). Consistent with this rule, the Department has granted motions to withdraw initial pleadings after the commencement of a hearing. *See Remand Proceeding concerning DSCI Corp. v. Dep't of Telecomms. & Energy*, 449 Mass. 597 (2007), D.T.C. 07-12, Order at 8 (May 28, 2008) (the Department granted a joint motion to withdraw all claims, motions, and any other pending requests pursuant to 220 C.M.R. § 1.04(4)(b)); *see also* *Petition of RNK, Inc.*, D.T.E. 06-52 (Apr. 20, 2007) (following a public hearing and discovery, petitioner notified the Department that it was withdrawing its complaint and the proceeding was terminated); *Complaint of Fiber Techs. Networks, L.L.C.*, D.T.E. 03-56 (July 7, 2004) (following a public hearing and comment period, the Department accepted the Parties' joint stipulation that all claims and counterclaims be dismissed with prejudice).

YourTel filed its Motion to Withdraw Petition in accordance with 220 C.M.R. § 1.04(4).⁴ In support of its Motion to Withdraw Petition, YourTel asserts that this docket has been stayed for a lengthy period of time awaiting the FCC's approval of YourTel's compliance plan; the factual record has become stale during the two year period since the evidentiary hearing was conducted by the Department; and YourTel has no indication that the predicate condition needed for the Department to proceed on YourTel's Petition, the FCC's approval of YourTel's compliance plan, is imminent. Motion to Withdraw Petition at 1. No opposition has been filed

⁴ Any such motion shall be served on every person who has entered an appearance in the proceeding and if any person has an objection thereto, he shall within ten days after receipt of the motion, file an objection with the Department. *See* 220 C.M.R. §§ 1.04(4)(b); 1.05(1). In this proceeding, no intervenors or other interested parties have entered an appearance and the Department finds that proper service has been satisfied.

to YourTel's Motion to Withdraw Petition.⁵ The Department agrees to allow YourTel to withdraw its Petition without prejudice.

YourTel further notes that the Department possesses responses to Record Requests 3 and 13 that are the subject of YourTel's motion for confidential treatment upon which the Department has not acted. Motion to Withdraw Petition at 1. YourTel requests that this information be returned to its counsel. *Id.*

Because YourTel is withdrawing its Petition without prejudice and the Department has not acted upon YourTel's motion for confidential treatment, responses to Record Requests 3 and 13 in the Department's possession will be returned to YourTel's counsel as requested. *See Pet. of Budget PrePay, Inc. for Limited Designation as a Lifeline-Only Eligible Telecomms. Carrier*, D.T.C. 11-12 (the Department allowed petitioner to withdraw asserted confidential information which was the subject of a pending motion for protection not yet ruled upon by the Department). *Compare Investigation by the Dep't of Telecomms. and Energy to establish a permanent surcharge to recover prudently incurred costs associated with the provision of wireline Enhanced 911 services, relay services for TDD/TTY users, commc'ns equipment distribution for people with disabilities, and amplified handsets at pay telephones*, D.T.E. 06-4, Order at 4 (Dec. 1, 2006) (following the appeal process, the Department declined to return confidential documents admitted into evidence and explained that to return same would be inconsistent with the Department's obligation to maintain a complete and accurate adjudicatory record).

⁵ *See* 220 C.M.R. § 1.04(4)(b) (In the absence of objections or a request for a hearing, within 30 days after the filing thereof, the motion of withdrawal shall be deemed allowed, unless otherwise ordered.)

IV. ORDER

Accordingly, it is hereby

ORDERED: Motion of YourTel America, Inc. for Withdrawal of Amended ETC

Petition without Prejudice is GRANTED; and it is

FURTHER ORDERED: YourTel's responses to Record Requests 3 and 13 be returned to YourTel upon release of this order; and it is

FURTHER ORDERED: this docket is closed.

By Order of the Department

/s/ Geoffrey G. Why
Geoffrey G. Why
Commissioner

RIGHT OF APPEAL

Pursuant to G. L. c. 25, § 5 and G. L. c. 166A, § 2, an appeal as to matters of law from any final decision, order or ruling of the Department may be taken to the Supreme Judicial Court for the County of Suffolk by an aggrieved party in interest by the filing of a written petition asking that the Order of the Department be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Department within twenty (20) days after the date of service of the decision, order or ruling of the Department, or within such further time as the Department may allow upon request filed prior to the expiration of the twenty (20) days after the date of service of said decision, order or ruling. Within ten (10) days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court for the County of Suffolk by filing a copy thereof with the Clerk of said Court.